

Exhibit D

Civil Action No. 5:19-cv-0041-KDB-DCK

**IN RE: LOWE'S COMPANIES, INC.
FAIR LABOR STANDARDS ACT
(FLSA) AND WAGE AND HOUR
LITIGATION**

DECLARATION OF TIMOTHY J. BECKER

COMES NOW YOUR DECLARANT, Timothy J. Becker, who states the following:

1. I make this declaration in support of Plaintiffs' Unopposed Motion to Certify a Collective Action Under Section 216(b) of the FLSA Solely for Settlement Purposes; For Approval of an Opt-in Settlement; For Appointment of Settlement Administrator; And for Approval of Awards of Attorneys' Fees and Costs and Service Awards (hereinafter, "Plaintiffs' Motion").

A. Practice Background

2. I am one of the Attorneys who worked in connection with Lead Counsel to facilitate a resolution to this litigation. I am personally familiar with, and have personal knowledge of, the files and records of this case.

3. I received my law degree in 1995 from William Mitchel College of Law in St. Paul, Minnesota where I graduated with honors. Since receiving my license to practice law in the State of Minnesota I have remained in good standing. For the past twenty-five years, I devoted my career to representing injury victim and consumers, particularly those injured by medical devices and

pharmaceutical products. To date, I am actively involved in prosecuting claims on behalf of plaintiffs who were injured by a variety of products and who were improperly paid overtime under the Fair Labor Standards Act.

4. I am a founding partner at the law firm of Johnson Becker, PLLC based in St. Paul, Minnesota. Johnson Becker, PLLC is a national plaintiffs' class action and products liability firm representing thousands of persons injured by defective medical devices, pharmaceuticals and products, and dozens of wage and hour cases on behalf of persons who were improperly paid overtime. Since opening its doors in 2011, courts throughout the nation have repeatedly selected the Firm's Partners and Associates to lead complex mass tort cases.

5. Since 2011, Johnson//Becker has become one of the preeminent contingent fee law firms in the country. The firm's primary practice areas include: employment litigation; personal injury, product liability and mass tort pharmaceutical and device litigation. The firm has been lead counsel and/or held positions of substantial responsibility on steering committees in lawsuits concerning wage and hour litigation, pharmaceutical mass torts and medical device mass torts. The firm's partners are experienced trial attorneys, with active cases pending in both state and federal courts throughout the country.

6. During my career, I amassed significant professional experience in leading complex wage and hour collective actions, product liability, and pharmaceutical litigation. Specifically, I was appointed to serve as Co-Lead Counsel in *In re: Zimmer NexGen Knee Implant Products Liability Litigation*, MDL 2272 (Co-Lead Counsel). As Co-Lead Counsel, I worked with my colleagues and defense counsel to litigate the case in a professional and cooperative manner. I was responsible for all aspects of the litigation including: a) drafting and negotiating preliminary procedural orders; b) deposition practice; c) expert work up; d) preparation and completion of all

Daubert motions; and e) trial counsel. In addition to my work in *In re: Zimmer*, courts throughout the nation have tasked me to serve as Co-Lead Counsel or as a member of the Executive Committee. A sample of those cases include the following: *In re: Testosterone Replacement Therapy Products Liability Litigation*, Civ. File No.: 14-C-1748, MDL No. 2545 pending before the Honorable Mathew Kennelly; *In re: AMS Transvaginal Mesh State Court Litigation*, 27-CV-11-3933, pending before the Honorable Ronald Abrams (Hennepin County, Minnesota) (Co-Lead Counsel); and *In re: Propecia (Finasteride) Products Liability Litigation*, MDL No. 2331 (Plaintiffs' Executive Committee), pending before the Honorable John Gleason in the United States District Court for the Eastern District of New York.

7. In addition to serving in multiple elevated leadership roles, I also served on numerous Plaintiffs' Steering Committees or in other capacities in the following mass tort cases: *In re: Effexor (Venlafaxine Hydrochloride) Products Liability Litigation* (Plaintiffs' Steering Committee), MDL 2458 pending before the Honorable Cynthia Ruffe in the Eastern District of Pennsylvania; and *In re: DePuy Orthopedics, Inc., ASR Hip Implant Products Liability Litigation*, MDL 2197 pending before the Honorable David S. Katz in the United States District Court for the Northern District of Ohio (Law and Briefing) where I played a substantive role in drafting and preparing numerous *motions in limine* for use in several state court actions who worked in coordination with the leadership of the MDL. In addition to these mass tort cases, I have served as court appointed Co-Lead counsel in numerous complex wage and hour cases a sample of which include: *Williams et al. v. Sykes Enterprises, Inc. et al.*, (J. Thunheim, D. Minn) (Co-Lead Class Counsel/FLSA Class of 30,000 workers); *Flores et. al v. Velocity Express, LLC*, (J. Tigar, N.D. Cal) (Co-Lead Class Counsel/FLSA Class of over 3,000 workers).

8. In addition to my experience in leading multi-district mass tort litigation, I also

possess a variety of practical skills required to effectively litigate a mass tort case. For example, in *In re: Incretin-Based Therapies Prod. Liab. Litig.*, MDL 2452 pending before the Honorable Anthony Battaglia, I was tasked with preparing the majority of Plaintiffs' experts, confronting Defendants' experts, and was the primary drafter for all *Daubert* briefs. Additionally, I served as trial counsel in a three-week trial before this Court in the *In re: Zimmer* MDL, and a four week complex product's liability claim in the Northern District of Ohio representing a welder who suffered permanent brain damages as a result of his use of welding products. See *In re Welding Rods Products Liability Litigation*, MDL 1535 (Lead Trial Counsel in *Mann v. Lincoln Elec.*). Prior to that I was Lead Trial Counsel in the *In re: Farmers Insurance Exchange Wage and Hour Litigation*, Hennepin County Court, State of Minnesota—a class action seeking to recover unpaid overtime on behalf of personal injury claims administrators. In *In re: Zicam Cold Remedy Marketing Sales Practice Litigation*, MDL 2096 (D. Ariz., 2011), I lead the science and briefing team that successfully fended off a vigorous *Daubert* challenge. See *In re Zicam Cold Remedy Marketing Sales and Products Liability Litigation*, 2011 WL 798898 (D.Az. 2011). Finally, in *In re: Uloric Prod. Liab. Litig.*, 20-CV-00623 pending before the Honorable Mathew Kennelly, I worked to secure a global settlement on behalf of Plaintiffs who were allegedly harmed by Defendants' product.

9. In addition to my trial experience, I also have an extensive appellate court background. Specifically, I am authorized to practice before the United States Court of Appeals for the First, Fourth, Sixth, Eighth, Ninth and Tenth Circuits. I was the principal author and counsel in multiple appeals before the Eighth, Ninth and Tenth United States Circuit Courts of Appeal including in the appeal before the Ninth Circuit in *In re: Incretin-Based Therapies Prod. Liab. Litig.*, MDL 2452. I have made numerous arguments before the Minnesota Court of Appeals and

successfully defended a favorable class verdict before the Minnesota Supreme Court in *Milner et. al. v. Farmers Insurance Exchange*, 748 N.W.2d 608 (Minn. 2008).

B. Overview of Johnson//Becker's Role in this Litigation

10. As set forth in detail in my time records submitted along with Plaintiffs' application for fees, I performed the following tasks in this case:

- A. I prepared for and was the primary questioner at numerous depositions;
- B. I reviewed key documents and conducted document review in anticipation of depositions;
- C. I assisted with the preparation and completion of the mediation statement;
- D. I participated in the settlement process and negotiations with Defense Counsel;
- E. I worked with several of Plaintiffs' experts and oversaw the preparation and completion of various expert reports, along with defending Plaintiffs' experts in depositions; and
- F. I worked with Lead Counsel to prepare for the depositions of Defendants' experts.

11. Beyond my own personal work in the case, Associate Zackary Kaylor from my Firm completed the following (as set forth in detail in the contemporaneous time records):

- A. Assisting Plaintiffs complete written discovery propounded by Defendant;
- B. Document review in anticipation of Plaintiff and Defense depositions;
- C. Client preparation for depositions;
- D. Client defense at depositions;
- E. Deposed defense witnesses;

- F. Review and drafting of litigation documents; and
- G. Assistance with preparation of Expert Reports.

12. Law Clerk Rose Monhaut from my Firm completed the following (as set forth in detail in the contemporaneous time records):

- A. Assisting Plaintiffs complete written discovery propounded by Defendant in multiple phases of discovery;
- B. Assisting Plaintiffs produce documents in response to requests made by Defendant in multiple phases of discovery;
- C. Communications to Plaintiffs regarding discovery and case status.

C. Reasonableness of Requested Attorneys' Fees and Costs

13. As set forth in the Declaration of Mr. Kevin Stoops, the attorneys' fees for Johnson//Becker are reasonable and appropriate. In preparing this declaration, I reviewed the time records for Johnson//Becker to confirm the time entries for all participating attorneys/paralegals were reasonable. As set forth in the time submission supplied to the Court, the hourly rates for Johnson//Becker attorneys and staff were as follows: Timothy Becker: \$825.00; Zackary Kaylor: \$325.00; and staff: \$125.00. The below chart summarizes the work performed by each member of my Firm. In addition, Johnson//Becker had \$1,130 in litigation expenses. The expenses were generally for filing fees, electronic submitted research and Federal Express mailings.

| Name | Rate | Position/Years of Practice | Number of Hours | Lodestar |
|----------------|-------------|-----------------------------------|------------------------|-----------------|
| Timothy Becker | \$825.00 | Partner (25+) | 312.2 | \$257,565.00 |
| Zackary Kaylor | \$325.00 | Associate (3+) | 367.2 | \$119,340.00 |
| Yer Thao | \$125.00 | Legal Assistant (6+) | 5.4 | \$675.00 |
| Rose Monhaut | \$125.00 | Law Clerk (3+) | 129.9 | \$16,237.00 |

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| | Total Lodestar | \$393,817.50 |
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I declare, under penalty of perjury, under the laws of the State of Minnesota that the foregoing is true and correct.

Executed this 9th day of May, 2022 at St. Paul, Minnesota.

Dated: May 9, 2022

/s/ Timothy J. Becker

Timothy J. Becker (MN Bar No. 0256663)

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